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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/987,196	11/13/2001	Carol L. Erdman	53394.000516	6155

56679 7590 09/26/2006

GOSZ AND PARTNERS, LLP  
450 BEDFORD STREET  
LEXINGTON, MA 02420

EXAMINER
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STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 09/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/987,196

Applicant(s)

ERDMAN, CAROL L.

Examiner

Jacqueline F. Stephens

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,4-22,25-33,36-44 and 47-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-22,25-33,36-44 and 47-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/5/06 has been entered.

### ***Response to Arguments***

2. Applicant's arguments filed 9/5/06 have been fully considered, and are moot in view of the new grounds of rejection.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 4-6, 8-12, and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Krzysik USPN 6503526.

As to claims 1, 9-12, and 14-17, Kryzik discloses an absorbent article comprising: a front and rear waist portion cooperating to form a waist opening (Figure 1); a crotch region formed between the front waist and rear waist portions (Figure 1); a selectively-permeable topsheet **22** is hydrophobic and comprises at least area treated with a surfactant. Kryzik discloses the surfactant includes aloe (col. 16, lines 35-54). Kryzik discloses the treated area may be the medial section along the longitudinal centerline of the diaper for greater wettability of such sections. Kryzik further discloses these same hydrophilic area may comprise a skin wellness composition (col. 31, lines 25-30).

The article further includes a substantially impermeable backsheet **20**, and an absorbent core **24** disposed between the selectively permeable topsheet and substantially impermeable backsheet. Given the broadest reasonable interpretation, any part of the topsheet is a predetermined insult point and thus the hydrophilic treated topsheet can constitute a portion of the surface of the topsheet, and can be construed as a hydrophilic zone.

Krzysik discloses the treated hydrophilic zone is defined by an area that corresponds to a medial longitudinal center of the absorbent article, which corresponds to a male and female insult point in that at least the center of the topsheet comprises the predetermined insult point.

As to claim 4, the skin-wellness substance is a substance effective or perceived as being effective in providing skin protection, skin care, skin improvement, or any combination thereof (col. 4, lines 4-8').

As to claims 5 and 8, Krzysik discloses the skin-wellness substance is selected from the claimed group of materials (col. 4, line 56 through col. 5 line 8; and col. 8, lines 5-16).

As to claim 6, Krzysik discloses a suitable skin-wellness substance includes Aloe (col. 16, lines 46-47).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Krzysik. Krzysik discloses various substances suitable for the skin wellness composition, but does not specifically disclose Vitamin E. It would have been an obvious matter of

design choice to use Vitamin E as a skin wellness composition, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

7. Claims 13, 18, 19-22, 25-33, 36-44, and 47-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krzysik in view of Guidotti et al. USPN 5741241.

Claims 13, and 18 recite length and width dimensions for the treated hydrophilic zone. It is obvious Krzysik has transverse and longitudinal dimensions of the topsheet (Figure 2) however Krzysik does not specifically disclose the dimensions. Although it is old and well known in the art to provide an insult area of a topsheet with an oval configuration, the examiner is relying on Guidotti to show a portion of an absorbent article being designated as a wetting area (Guidotti Figure 1, element 16 and col. 4, lines 16-26). Guidotti further discloses a hydrophilic layer 16 that functions as a receiving area and allows liquid to quickly flow penetrate and covers only the wetting area (col. 4, lines 4-7, and lines 23-31). Based on the teachings of Krzysik and Guidotti, it would have been within the level of one of ordinary skill in the art to provide a hydrophilic oval area that corresponds to a wetting region to receive discharged body liquids that first contact the diaper surface for the quick penetration and dispersal of those body liquids.

Regarding the dimensions of the wetting region, it would have been an obvious matter of design choice to provide the topsheet and insult zones of Krzysik/Guidotti with the claimed dimensions, since such a modification would have involved a mere change

in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

As to claims 19, 21, 22-33, 38, 41-44, 47-50, Kryzik discloses an absorbent article and method for preparing an article comprising: a front and rear waist portion cooperating to form a waist opening (Figure 1); a crotch region formed between the front waist and rear waist portions (Figure 1); a selectively-permeable topsheet **22** is hydrophobic and comprises at least area treated with a surfactant. Kryzik discloses the surfactant includes aloe (col. 16, lines 35-54). Krzysik discloses the treated area may be the medial section along the longitudinal centerline of the diaper for greater wettability of such sections. Kryzik further discloses these same hydrophilic area may comprise a skin wellness composition (col. 31, lines 25-30).

The article further includes a substantially impermeable backsheet **20**, and an absorbent core **24** disposed between the selectively permeable topsheet and substantially impermeable backsheet, and first and second leg gathers **26** at the leg openings (Figure 1). Given the broadest reasonable interpretation, any part of the topsheet is a predetermined insult point and thus the hydrophilic treated topsheet can constitute a portion of the surface of the topsheet, and can be construed as a hydrophilic zone.

Krzysik discloses the treated hydrophilic zone is defined by an area that corresponds to a medial longitudinal center of the absorbent article, which corresponds

to a male and female insult point in that at least the center of the topsheet comprises the predetermined insult point.

It is obvious Krzysik has transverse and longitudinal dimensions of the topsheet (Figure 2) however Krzysik does not specifically disclose the dimensions. Although it is old and well known in the art to provide an insult area of a topsheet with an oval configuration, the examiner is relying on Guidotti to show a portion of an absorbent article being designated as a wetting area (Guidotti Figure 1, element 16 and col. 4, lines 16-26). Guidotti further discloses a hydrophilic layer 16 that functions as a receiving area and allows liquid to quickly flow penetrate and covers only the wetting area (col. 4, lines 4-7, and lines 23-31). Based on the teachings of Krzysik and Guidotti, it would have been within the level of one of ordinary skill in the art to provide a hydrophilic oval area that corresponds to a wetting region to receive discharged body liquids that first contact the diaper surface for the quick penetration and dispersal of those body liquids.

Regarding the dimensions of the wetting region, it would have been an obvious matter of design choice to provide the topsheet and insult zones of Krzysik/Guidotti with the claimed dimensions, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).



As to claims 20, 37, and 40, Krzysik discloses the skin-wellness substance is selected from the claimed group of materials (col. 4, line 56 through col. 5 line 8; and col. 8, lines 5-16).

As to claim 36, the skin-wellness substance is a substance effective or perceived as being effective in providing skin protection, skin care, skin improvement, or any combination thereof (col. 4, lines 4-8).

As to claim 39, Krzysik/Guidotti discloses various substances suitable for the skin wellness composition, but does not specifically disclose Vitamin E. It would have been an obvious matter of design choice to use Vitamin E as a skin wellness composition, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jacqueline F Stephens  
Primary Examiner  
Art Unit 3761

September 17, 2006